

STATE OF NORTH DAKOTA
RACING COMMISSION

IN THE MATTER OF:
Appeal of Wanda Belgarde

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**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

OAH File No. 20040252

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On July 20, 2004, the North Dakota Racing Commission (“Commission”) requested the designation of an administrative law judge (“ALJ”) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to this matter. This matter involves the June 10, 2004, appeal of Wanda Belgarde (“Belgarde”) from determinations by the Board of Stewards on August 31, 2003, two rulings concerning Belgarde’s actions with regard to two horses entered in races at the Fargo Race Park (“FRP” or “the Park”) on August 24, 2003. The Board of Stewards issued two rulings on August 31, 2003, each fining Belgarde \$100 for violation of N.D. Admin. Code § 69.5-01-07-08, Scratch - Declaring Out. The Commission affirmed the rulings on May 18, 2004, and Belgarde appealed. On July 21, 2004, the undersigned ALJ was designated to preside as hearing officer.

On July 23, 2004, the ALJ issued a Notice of Hearing with a specification of issue. The hearing was held as scheduled on September 16, 2004, in the Office of Administrative Hearings, Bismarck, North Dakota. The issue specified is “[w]hether trainer Wanda Belgarde twice failed to scratch a horse in a timely manner in violation of N.D. Admin. Code § 69.5-01-07-08, and, therefore, should be fined \$100.00 for each violation.”

At the hearing, the Racing Commission was represented by Assistant Attorney General Bill Peterson. Belgarde was present and represented herself. The Commission called one witness, Mr. Randy Blesseg, Chief Steward, FRP (the State Steward). The Commission offered 10 exhibits; all which were admitted (exhibits 1-9 and 12). *See* attached exhibit list. Belgarde testified in her own behalf and offered three exhibits, two of which were admitted (exhibits 10 and 11 were admitted, exhibit 13 was not, but is included in the record as an exhibit not admitted). *See* attached exhibit list. After the hearing, the administrative law judge took official notice of one exhibit that was referred to at the hearing but not offered. *See* attached exhibit list.

At the close of the hearing the ALJ heard oral argument from Mr. Peterson and Ms. Belgarde.

Based on the evidence presented at the hearing and the oral argument of the parties, the ALJ makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Belgarde was a licensed trainer in the state of North Dakota on August 24, 2003, having just previously been licensed. *See* N.D. Admin. Code § 69.5-01-05-27. *See* also, N.D. Admin. Code §§ 69.5-01-05-28 and 69.5-01-01-01(8).

2. On the weekend of August 22-24, 2003, there was horse racing at the Park. Races were run on August 24, 2003.

3. As a licensed trainer, and authorized agent of the owners, Belgarde entered at least two horses for the owners for two separate races at the Park that weekend, Recall and Tater Tate. Exhibits 1 and 2. Belgarde admits that she entered these two horses as a trainer and authorized agent for the owners of these two horses as the two forms indicate. *See* N.D. Admin. Code § 69.5-01-05-26(3).

4. The evidence shows, by the greater weight of the evidence, that no one scratched or declared out either Recall or Tater Tate from races in which they were entered at the Park on August 24, 2004.

5. “‘Scratch’ means the act of withdrawing an entered horse from the race after the closing of overnight entries.” N.D. Admin. Code § 69.5-01-01-01(52).

6. “‘Scratch time’ means the time set by the association for the closing of applications to withdraw from races of that day.” N.D. Admin. Code § 69.5-01-01-01(53).

7. N.D. Admin. Code § 69.5-01-07-08 requires that “[n]o horse may be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing secretary before the time set by the association as scratch time. All scratches must be approved by the stewards.” N.D. Admin. Code § 69.5-01-07-08(1). This section further requires, “[u]nless otherwise set by the racing secretary, scratch time, with regard to ... races may be no later than eight a.m. of the day of the race.” N.D. Admin. Code § 69.5-01-07-08(4).

8. On August 24, 2003, neither Recall nor Tater Tate appeared at the FRP paddock just prior to the start of the race in which they were entered. The paddock is the location at which horses appear just prior to the start of a race. The stewards on each occasion scratched the horse failing to appear from the race in which they were entered (Recall from race number 4 and Tater Tate from race number 7) and contacted the mutuals (the betting interests) to inform them of the scratch so that they could issue refunds and take other appropriate action in regard to bets already placed on these two horses.

9. As background, generally at FRP, horses are entered by trainers or other authorized agents 72 hours before a race is to be run. The horses are entered pursuant to FRP

conditions and are drawn for various races. The two horses involved in this matter, owned by others, were entered by Belgarde, as the trainer, for two races on August 23, but were actually drawn for two races, the 4th and 7th race on August 24, 2004. Scratch time for the horses as set by FRP was between 8:00 and 8:30 on the day following their entry. Notwithstanding the provisions of N.D. Admin. Code § 69.5-01-07-08, scratch time is normally determined by race park management. Scratches can be made by the person entering the horse, usually by the trainer or authorized agent, within the time allowed for scratching a horse. Scratches can also be made by a steward for rules violations. *See* N.D. Admin. Code § 69.5-01-07-01 and 69.5-01-07-05. The time for Belgarde to scratch either Recall or Tater Tate would have been between 8:00 and 8:30 on the day after entry, but certainly, at least, before 8:00 a.m. on the day of the two races in which the horses ran on August 24, 2003. Belgarde did not scratch either horse as required and when each horse did not show up at the paddock, just prior to the race, the stewards scratched each horse. The stewards did not have any indication from anyone that the horses were being scratched until just before the race when they did not show up at the paddock.

10. “‘Stewards’ means the duly appointed racing officials or their deputies serving at the licensed horse racing meeting.” N.D. Admin. Code § 69.5-01-01-01(60).

11. Belgarde asserted at the hearing that she came to the FRP offices after racing was over that weekend to ask the chief steward, Mr. Blasseg, about what was going on in regard to the two horses, but was rebuffed in her efforts to talk to him. She asked for the entry papers and other papers back at that time, but was not given anything. Belgarde also asserted that she had lost control as the trainer of the horses and did not have responsibility for them at the time of the races in which they were to run. However, from the evidence at the hearing, although it appears that there may have been something going on in regard to the relationship between the owners

and their authorized agent, their trainer, Belgarde, it is not entirely clear what was going on. Nevertheless, Belgarde was still on record as acting as the authorized agent of the owners, as the licensed trainer, for these two horses at the time of the two races in which they were entered by her, and she neither verbally nor in writing (as the rule requires) scratched either of the two horses before the race, and certainly not at the time required by FRP. In fact, the evidence shows that no one tried to scratch either of these two horses before the races in which they were entered. Because of their absence from the race, these two horses had to be scratched by the stewards and bettors informed on short notice, thus possibly compromising the integrity of the race. *See* N.D. Admin. Code § 69.5-01-07-08(3).

12. After the racing at FRP on August 24, 2003, Mr. Blasseg called Belgarde to inform her about a stewards hearing on the two alleged scratching violations, scheduled for August 30, 2003. Belgarde denies that Blasseg called her and claims that she heard about the hearing elsewhere. In any event, Belgarde showed up for the stewards hearing on August 30, at which time she was handed a copy of exhibits 3 and 4. Exhibits 3 and 4 are the Notice of Hearing for each violation. Belgarde was not served prior to the stewards hearing. As a result of the August 30 stewards hearing, a Board of Stewards Ruling was issued on August 31, 2003, fining Belgarde \$100 for each of two separate violations of N.D. Admin. Code § 69.5-01-07-08. Exhibits 5 and 6. The Commission affirmed the Board of Stewards Ruling at its meeting of May 18, 2004. Exhibit 12, at 12. On May 20, 2004, the Commission issued to Belgarde a Notice of Opportunity for a Hearing. Exhibits 7-9.

On June 10, 2004, Belgarde appealed and asked for a hearing under N.D. Admin. Code § 69.5-01-03-09(1). *See* N.D. Admin. Code §§ 69.5-01-03-07 through 69.5-01-03-09.¹

CONCLUSIONS OF LAW

1. On August 24, 2003, at the time of the two races in question in this matter, Belgarde was a licensed trainer subject to the provisions of N.D.C.C. ch. 53-06.2 and N.D. Admin. Code Art. 69.5-01.

2. The evidence shows, by the greater weight of the evidence, that on or about August 24, 2004, Belgarde failed to scratch or declare out, as required, two horses entered by her in two separate races at FRP, in violation of N.D. Admin. Code § 69.5-01-07-08.

3. Under N.D.C.C. § 53-06.2-15 and N.D. Admin. Code § 69.5-01-03-07 stewards may impose an administrative fee or fine for violation of the racing statutes and rules, not to exceed \$1,000.

4. The Board of Stewards Ruling, affirmed by the Commission, imposes on Belgarde a \$100 fine for each of two separate violations of N.D. Admin. Code § 69.5-01-07-08. Imposition of such fines or administrative fees is appropriate under the facts and law in this matter.

¹ Although it appears from N.D. Admin. Code § 69.5-01-03-09(1) that Belgarde should have appealed the Board of Stewards Ruling in writing to the Commission (there was no evidence that she did, though she may have), the Board took up the matter of the Board of Stewards ruling and affirmed it, giving Belgarde an opportunity to appeal the ruling and request a hearing. She did so and was given a hearing under N.D.C.C. ch. 28-32. Belgarde also challenges the timeliness of the Commission taking up the matter at its meeting and its affirmance of the Board of Steward's Ruling. However, there is no evidence that she filed any appeal until after the Commission affirmance.

RECOMMENDED ORDER

The greater weight of the evidence shows that Belgarde violated the provisions of N.D. Admin. Code § 69.5-01-07-08 as determined by the Board of Stewards Ruling and affirmed by the Commission. Upon hearing, the determination of the Board of Stewards Ruling should be and is **affirmed**.

Dated at Bismarck, North Dakota, this 22nd day of September, 2004.

State of North Dakota
North Dakota Racing Commission

By: _____
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